

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DENNIS WELLS,

Plaintiff,

v.

CITY OF MONTGOMERY, OHIO,

Defendant.

: Case No. 1:04CV425

: J. Hogan

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**ORDER GRANTING PLAINTIFF'S
MOTION FOR DIRECTED VERDICT
AND ORDERING INJUNCTIVE
RELIEF AND DAMAGES**

After considering all of the evidence in this case, the Court finds that the final decision of the City of Montgomery on who to promote to sergeant in 2004 was motivated, at least in part, by absences of Plaintiff that were protected by the FMLA. Therefore, the Court finds that the Plaintiff has met his burden of showing that the City of Montgomery unlawfully considered FMLA-protected absences as a motivating factor in making the 2004 decision on who to promote to the position of sergeant and the Court orders the following relief:

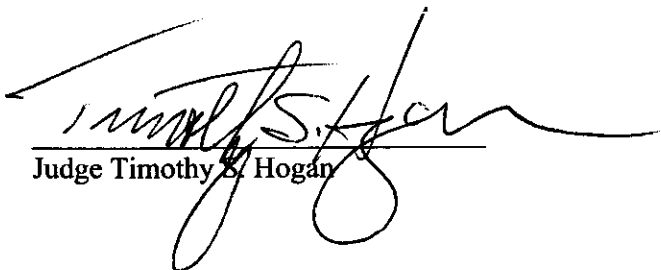
The current eligibility list will remain open with PO Wells listed as the first eligible until the next available appointment is open for the position of sergeant whether such opening occurs through attrition, promotion to a higher position, or expansion of the sergeant positions within the Department. At that time, PO Wells shall be appointed sergeant unless he cannot qualify at that time as a result of failing a physical examination or if he has been disciplined prior to the appointment. Disqualifying discipline shall be final disciplinary action which results in a suspension of more than three days or termination which has been finalized through the procedural process consistent with the Collective Bargaining Agreement then in effect between

the City of Montgomery and the Fraternal Order of Police Ohio Labor Council, Inc., or absent a valid Collective Bargaining Agreement, such disciplinary action has been finalized pursuant to the Rules and Laws governing the Civil Service Commission within the City of Montgomery. If disqualifying discipline has not been resolved to a final order through either of these processes, at such time as the promotion of Dennis Wells to sergeant shall become available, then the promotion to sergeant shall be stayed until such disciplinary action is finally resolved to determine if such disciplinary action disqualifies him from promotion.

At the time PO Wells is appointed sergeant, he shall receive seniority credit for the position retroactive to April 1, 2006. PO Wells shall be paid in accordance with the terms of the Collective Bargaining Agreement between the City of Montgomery and the FOP as a patrol officer until he is appointed sergeant, and according to the scale then in effect for the sergeant's position once the appointment is made.

Plaintiff is awarded a total of \$30,000 for front pay, back pay and all other compensatory damages claimed. Attorneys' fees and costs are awarded to Plaintiff's counsel, Freking and Betz, in the amount of \$115,475. Payment should be made to Plaintiff's counsel, Freking & Betz, within 21 days of entry of this Order.

IT IS SO ORDERED.


Judge Timothy S. Hogan